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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,998	03/24/2004	Loren Venegas	IDS-16002/14	4665
25006	7590	05/25/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/807,998

Applicant(s)

VENEGAS, LOREN

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "or other landscape feature" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or other landscape feature "), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 2-4 are dependent on claim 1 and are rejected for the above reason.

Further, regarding claim 4, the phrase "or other accessories" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or other accessories "), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 6-9 recite the limitation "the article" in line 1. There is insufficient antecedent basis for these limitations in the claims. Amending the claims to read "the vessel" would appear to overcome this rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Palmer (Des. 414,931).

Palmer discloses a containment system comprising a vessel disguised to look like a landscape feature (pine cone) and having a base portion and lid (see Figure 1). Palmer is fully capable of storing items (including pet waste) as claimed.

3. Claims 1, 2, 5, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Abel (US 5,011,034).

Claims 1, 5, and 9: Abel discloses a containment system disguised to look like a plant (see Figure 1) and having a base portion 11 and a lid 12. Abel is fully capable of storing items (including pet waste) as claimed.

Claim 2: Abel discloses garden hose 20.

4. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Garvin-Mazzarisi (US 5,551,569).

Garvin-Mazzarisi discloses a pet waste clean-up system comprising a vessel **10** disguised to look like a natural product (cat) and having a base portion **14** and lid **12** enabling a user to accumulate pet waste until ultimate disposal.

5. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Buckley (US 2004/0163972 A1).

Buckley discloses a containment system comprising a vessel **100** disguised to look like a landscape feature (sprinkler) and having a base portion **102** and a lid **104**. Buckley is fully capable of storing items (including pet waste) as claimed.

6. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Arthur (US 6,087,582).

Arthur discloses a containment system comprising a vessel **10** disguised to look like a rock and having a base portion **14** and a lid **70**. Arthur is fully capable of storing items (including pet waste) as claimed.

7. Claims 1, 5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Holloway et al (US 4,781,643; hereinafter Holloway).

Holloway discloses a containment system comprising a vessel **10** disguised to look like a tree stump and having a base portion **12** and a lid **14**. Although disclosed as

usable as a toy box, Holloway is fully capable of storing items (including pet waste) as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer in view of Ayon et al (US 4,815,999; hereinafter Ayon).

Palmer, as applied to claim 1 above, discloses the claimed invention except for the insulated walls.

Ayon discloses a decorative container 10 with insulated walls 16 used to keep beverages cool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vessel of Palmer with insulated walls as taught by Ayon in order to keep beverages cool.

9. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luker et al (US 4,288,000; hereinafter Luker) in view of Abel.

Luker discloses a vessel **10/11** having a base portion **10** and a lid **11** and holding chemicals for swimming pool use (see for example Col. 1, lines 6-9). Luker merely lacks the vessel disguised to look like a landscape feature.

Abel teaches disguising a vessel to look like a plant for the purpose of concealing the retained articles and to present an ornamental unit (see for example, Col. 1, lines 22-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to disguise the vessel of Luker to look like a plant, as taught by Abel, in order to conceal the chemicals and present an ornamental unit. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

10. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garvin-Mazzarisi.

Garvin-Mazzarisi discloses a cat or other animal shape (see Col. 3, lines 51-64).

Garvin-Mazzarisi does not disclose expressly the shapes of a rock, boulder, tree stump, fire hydrant, cactus, or plant.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the vessel of Garvin-Mazzarisi in any of the above shapes because applicant has not disclosed that the specific shape provides an advantage, is used for a particular purpose, or solves a

stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with either the animal shapes disclosed by Garvin-Mazzarisi or the shapes claimed by the applicant because both would serve to decoratively disguise the container.

Therefore, it would have been an obvious matter of design choice to modify the shape of Garvin-Mazzarisi to obtain the invention as specified in claims 6-9.

Moreover, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Both Cleveland and Jones disclose vessels disguised as landscape features.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Greg Pickett  
Examiner  
22 May 2006



ANTHONY D. STASHICK  
PRIMARY EXAMINER